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**IN THE
COURT OF APPEALS OF INDIANA**

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No. 73A01-0705-CR-220

APPEAL FROM THE SHELBY CIRCUIT COURT
The Honorable Charles D. O'Connor, Judge
Cause No. 73C01-0605-MR-001

April 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Danny Lee Quick appeals his conviction and sentence for Murder,¹ a felony. Specifically, Quick argues that (1) the trial court erred by not granting his motion to suppress statements he and his wife made to police in the lobby of the police station; (2) the evidence presented at trial was insufficient to support his conviction for murder; (3) the trial court erred by granting the State's motion in limine excluding evidence that the victim's residence had been burglarized seven weeks prior to her murder; and (4) the trial court abused its discretion during sentencing by enhancing Quick's sentence based on two improper aggravators. Finding no error, we affirm the judgment of the trial court.

FACTS²

Around 4:00 p.m. on May 19, 2006, Dennis Tackett drove Quick from Shelbyville to Indianapolis to purchase crack cocaine. On the way, Tackett stopped at a BP gas station and Quick bought a glass tube they could use as a pipe to smoke the drug. When they reached Indianapolis, Tackett and Quick each spent \$50 on crack cocaine and smoked some of it as they drove back to Shelbyville.

Upon arriving in Shelbyville, Tackett dropped Quick off at his apartment and left. Quick stayed at Tackett's apartment and smoked the rest of the crack cocaine. At approximately 10:00 p.m., Quick called Tackett and asked if they could drive back to Indianapolis to purchase more of the drug. Tackett and Gary Junken picked Quick up from

¹ Ind. Code § 35-42-1-1.

² We heard oral argument in Indianapolis on March 27, 2008. We commend counsel for their excellent written and oral presentations, and we thank the Carmel High School students who attended the argument for their presence and respectful demeanor.

Tackett's apartment around 11:30 p.m. and drove back to Indianapolis, where the men spent \$20 on crack cocaine and smoked some of it on the return trip to Shelbyville. Tackett dropped Quick off at the apartment around 1:00 a.m. and left with Junken.

Quick smoked the rest of the crack cocaine at Tackett's apartment. While looking out the window, he observed a man leaving a neighboring apartment where Teresa McEwan lived. Quick and McEwan were romantically involved and Quick was considering leaving his wife to live with McEwan. Quick knocked on McEwan's door and she let him in the apartment. Quick and McEwan sat on her couch, smoked crack cocaine, and talked.

After talking for a while, Quick and McEwan began arguing about their relationship and McEwan threatened to tell Quick's wife about their affair. A physical struggle ensued and McEwan grabbed a knife that was sitting on a nearby table and "started to come at [Quick]." Tr. p. 1068. Quick took the knife from McEwan and stabbed her multiple times in the face, neck, and chest. While McEwan lay on the floor of her apartment, Quick fled to Tackett's apartment, still carrying the bloody knife.

At Tackett's apartment, Quick removed his bloody clothes and redressed in Tackett's clothes. Quick put the bloody clothing and knife in a white plastic trash bag. At approximately 4:20 a.m., Steve Myers arrived at Tackett's apartment. Quick left Tackett's apartment and told Myers that he was going home. While riding his bicycle, Quick threw the white plastic trash bag containing the knife and clothes into a river.

After arriving at his apartment, Quick showered and changed clothes. A few hours later, Quick woke his wife, Stacy, and asked her to come to the kitchen to talk. In the

kitchen, Quick told Stacy that he “need[ed] to go to the police station [because he thought he] may have killed [McEwan].” Id. at 1074. Stacy began yelling at Quick, which woke her mother, Nancy. Nancy entered the kitchen and Quick told her that he thought he had killed McEwan.

Quick and Stacy walked to the Shelbyville Police Department. Stacy told the police dispatcher, Linda Amos, that Quick “had killed someone.” Id. at 318. Amos informed Officer Keith England, who approached the Quicks in the lobby to get further information. Officer England asked the couple why they were at the police station and Stacy responded, “[H]e told me he just killed somebody.” Id. at 353. Quick did not react or deny the statement. When Officer England turned his attention to Quick to ask what was going on, Quick responded, “I think I just killed somebody.” Id. at 354. Officer England asked Quick if he was sure that the victim was dead and Quick responded, “Yes.” Id. Quick told Officer England where McEwan’s apartment was located. Emergency medical personnel were sent to the apartment, where they found McEwan’s body.

Officer England took Quick to a conference room and advised him of his Miranda³ rights. Quick told Officer England that he understood his rights and waived them. Quick summarized the events of the night and admitted that he and McEwan had been smoking crack cocaine. Quick told Officer England that after finishing the drugs, he “blacked out and the next thing that he remembered he was standing in the kitchen looking into the living room [with] a knife in his hand and he had blood on his shirt and his shorts.” Id. at 360.

³ Miranda v. Arizona, 384 U.S. 436 (1966).

Quick admitted to Officer England that he had left McEwan's apartment, changed into Tackett's clothes, and thrown the bloody clothes and the knife into a river.

The State charged Quick with murder on May 22, 2006. Prior to trial, Quick filed a motion to suppress (1) the statement Stacy made to Amos, the police dispatcher, when they arrived at the jail and (2) statements Quick made to Officer England in the police station lobby. The State filed a motion in limine to preclude Quick from introducing evidence that McEwan's apartment had been burglarized on March 29 and 30—approximately seven weeks before the murder. A hearing was held on January 16, 2007, and on January 23, 2007, the trial court denied Quick's motion and granted the State's motion.

A jury trial began on January 23, 2007. Quick, Stacy, police dispatcher Amos, and Officer England testified at trial. After deliberating, the jury found Quick guilty as charged. The trial court held a sentencing hearing on March 2, 2007, and sentenced Quick to sixty-two years imprisonment with two years suspended to probation. Quick now appeals.

DISCUSSION AND DECISION

I. Statements in the Police Station Lobby

Quick argues that the trial court erred by denying his motion to suppress statements he made to Officer England in the police station lobby. Specifically, Quick contends that he was in custody when Officer England questioned him in the lobby and that he had not been advised of his Miranda rights.⁴

⁴ Quick also challenges the trial court's denial of his motion to suppress statements he made to his wife at the police station after he had asserted his Miranda rights. Because those statements were not admitted into evidence at trial, we need not address that argument.

Because Quick did not file an interlocutory appeal challenging the trial court's denial of his motion to suppress, Quick may not now challenge that ruling on appeal. Kelley v. State, 825 N.E.2d 420, 424 (Ind. Ct. App. 2005). Instead, the issue is more appropriately framed as whether or not the trial court abused its discretion by admitting the evidence at trial. A trial court has broad discretion in ruling on the admissibility of evidence and we will reverse such a ruling only for an abuse of that discretion. Bentley v. State, 846 N.E.2d 300, 304 (Ind. Ct. App. 2006), trans. denied. An abuse of discretion generally occurs when a decision is clearly against the logic and effect of the facts and circumstances before the court. Id.

A person must be informed of the right to remain silent, his right to an attorney, and that what he says may be used against him any time “law enforcement officers question a person who has been ‘taken into custody or otherwise deprived of his freedom of action in any significant way.’” Luna v. State, 788 N.E.2d 832, 833 (Ind. 2003) (quoting Miranda, 384 U.S. at 444). Statements given in violation of Miranda are normally inadmissible in a criminal trial. Morris v. State, 871 N.E.2d 1011, 1016 (Ind. Ct. App. 2007), trans. denied.

“Miranda warnings do not need to be given when the person questioned has not been placed in custody.” Johansen v. State, 499 N.E.2d 1128, 1130 (Ind. 1986). In determining whether a person was in custody or deprived of freedom such that Miranda warnings are required, “the ultimate inquiry is simply whether there is a ‘formal arrest or restraint on freedom of movement’ of the degree associated with a formal arrest.” Luna, 788 N.E.2d at 833 (quoting California v. Beheler, 463 U.S. 1121, 1125 (1983)). We will make this

determination “by examining whether a reasonable person in similar circumstances would believe he is not free to leave.” King v. State, 844 N.E.2d 92, 96-97 (Ind. Ct. App. 2005). We will examine all the circumstances surrounding an interrogation and are concerned with “objective circumstances, not upon the subjective views of the interrogating officers or the subject being questioned.” Gauvin v. State, 878 N.E.2d 515, 520 (Ind. Ct. App. 2007). In order to conclude that the defendant was indeed seized at the time of the statement, we must find that the officer “by means of physical force or show of authority, has in some way restrained the liberty of a citizen.” Jones v. State, 866 N.E.2d 339, 342-43 (Ind. Ct. App. 2007), trans. denied.

Quick notes that when he and Stacy arrived at the police station, Stacy told police dispatcher Amos that her husband had told her that he might have killed someone.⁵ Amos told Officer England, who subsequently entered the lobby to talk to the Quicks. Quick argues that he was effectively in custody and had not been advised of his Miranda rights when Officer England asked, “[W]hat’s going on?” Tr. p. 153. Thus, he argues that the trial court erred by admitting his responses into evidence at trial.

Applying the objective circumstances test to the facts of this case, we conclude that a reasonable person in Quick’s position would not have believed himself to be in custody when Officer England approached him in the lobby. The Quicks voluntarily walked to the police

⁵ Quick also argues that the trial court erred by allowing Amos to testify regarding Stacy’s initial statement. Inasmuch as we ultimately conclude that Quick’s statements to Officer England were admissible and, additionally, Quick testified at trial that Stacy “picked up the phone and [told Amos that] my husband just [told] me that he killed someone[,]” tr. p. 1075, we conclude that Quick was not prejudiced by Amos’s testimony. Thus, we will not address the issue further.

station, voluntarily approached police dispatcher Amos, and voluntarily stayed in the lobby until Officer England approached them. Our Supreme Court has previously held that “the Miranda warnings are not required simply because the questioning takes place in a police station or because the questioned person is a police suspect.” Cliver v. State, 666 N.E.2d 59, 66 (Ind. 1996); see also Graham v. State, 535 N.E.2d 1152, 1154 (Ind. 1989) (holding that the Miranda safeguards do not apply to a defendant who voluntarily walked into a police station and announced that he shot someone because “he was not in custody or deprived of his freedom in any way”). In this case, the lobby was “a common area . . . [where] people are free to come and go as they please.” Tr. p. 150. Officer England did not arrest or restrain Quick; instead, he simply asked, “[W]hat’s going on?” Id. at 153. Because Quick was not in custody, the Miranda warnings were not required.

Furthermore, a defendant “is entitled to the procedural safeguards of Miranda only if subject to custodial interrogation.” Lawson v. State, 803 N.E.2d 237, 239 (Ind. Ct. App. 2004) (emphasis added). “Interrogation is defined as express questioning and words or actions on the part of the police that the police know are reasonably likely to elicit an incriminating response from the suspect.” Id. Not every question posed by an officer amounts to interrogation for the purposes of Miranda. Wright v. State, 766 N.E.2d 1223, 1231 (Ind. Ct. App. 2002).

Officer England first asked Stacy, “[W]hat’s going on?” Tr. p. 151. After she replied that her husband had told her that he killed someone, Officer England turned his attention to Quick and asked him three questions: a general inquiry regarding Quick’s presence at the

station, whether Quick was sure that the victim was dead, and the location of the victim's body. As for the first question, we do not believe that Officer England should have known that his general inquiry into Quick's presence was reasonably likely to elicit an incriminating response.⁶ Instead, Officer England's general inquiry was an attempt to assess the situation—police dispatcher Amos had told him that the Quicks had come to the police station and alerted her that someone was dead, an assertion that Stacy had concisely confirmed. Thus, it was reasonable for Officer England to pose a general question to Quick regarding his presence at the station.

After Quick responded to Officer England that he thought he had killed someone, Officer England's second two questions regarding the status and location of the victim were proper under the public safety exception to Miranda. See Bailey v. State, 763 N.E.2d 998, 1002 (Ind. 2002) (noting that "there is a fair amount of authority holding that questioning for the limited purposes of locating or aiding a possible victim falls within the 'public safety exception' to Miranda"). Because Officer England's second two questions were limited to the victim's status and location, those questions were not the type of "interrogation" Miranda contemplates. Id. Thus, the trial court did not abuse its discretion by admitting Officer England's testimony regarding Quick's responses.

Finally, and perhaps most convincingly, Quick testified at trial that that he told Officer

⁶ At oral argument, the State astutely noted that there was no way for Officer England to know for certain that his general question would elicit an incriminating response from Quick because a killing is not necessarily a criminal act for which one can be convicted. See, e.g., Wilson v. State, 770 N.E.2d 799, 800 (Ind. 2002) (holding that "[a] valid claim of defense of oneself or another person is legal justification for an otherwise criminal act [of murder]").

England in the lobby, “I might have killed someone.” Tr. p. 1076. Thus, even assuming for the sake of the argument that Officer England was improperly allowed to testify about Quick’s statements in the lobby, in light of Quick’s trial admission, he cannot show that he was prejudiced by Officer England’s testimony.

II. Sufficiency

Quick argues that the State presented insufficient evidence to support his murder conviction. Quick emphasizes that he and McEwan had been romantically involved and that “this physical altercation all started after an argument over another man [and] McEwan threatened to call [Quick’s wife].” Appellant’s Br. p. 17. Quick argues that he acted in sudden heat when he killed McEwan; thus, his conviction for murder was improper.

A person who knowingly or intentionally kills another human being commits murder. I.C. § 35-42-1-1. When reviewing challenges to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. Vasquez v. State, 741 N.E.2d 1214, 1216 (Ind. 2001). Rather, we will examine the evidence and the reasonable inferences that may be drawn therefrom that support the verdict and will affirm a conviction if there is probative evidence based on which a jury could find the defendant guilty beyond a reasonable doubt. Id. Put another way, we will affirm unless “no rational fact-finder” could have found the defendant guilty beyond a reasonable doubt. Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000).

A person engages in conduct “knowingly” if, when he engages in the conduct, he is aware of a high probability that he is doing so. Ind. Code § 35-41-2-2(b). Thus, to sustain

the murder conviction, the evidence must show that Quick was aware of a high probability that McEwan's death would result from his actions. Young v. State, 761 N.E.2d 387, 389 (Ind. 2002). Because knowledge is a mental state, the trier of fact must draw reasonable inferences of its existence. Id. "A knowing killing may be inferred from the use of a deadly weapon in a way likely to cause death." Barker v. State, 695 N.E.2d 925 (Ind. 1998).

Sudden heat occurs when a defendant is provoked in a way sufficient to excite anger, rage, sudden resentment, or terror. Stevens v. State, 691 N.E.2d 412, 426 (Ind. 1997). Sudden heat obscures reasoning and prevents deliberation and premeditation. Id. The State has the burden to disprove the existence of sudden heat beyond a reasonable doubt when a defendant raises the issue at trial. Conner v. State, 829 N.E.2d 21, 24 (Ind. 2005).

Quick emphasizes that he was the only person to testify regarding what happened in McEwan's apartment on the night of her murder. He emphasizes that he and McEwan were arguing before she died and that he killed her in sudden heat. Although Quick does not believe that the State carried its burden to disprove the existence of sudden heat beyond a reasonable doubt, the evidence present at trial is compelling. Specifically, the extensive nature of McEwan's wounds show that Quick possessed the requisite intent for murder. Dr. Michele Catellier, the State's forensic pathologist, testified that he observed forty-four separate injuries on McEwan's body while conducting the autopsy. Tr. p. 907. Dr. Catellier concluded that McEwan had been stabbed in the face, neck, and chest. Id. at 906-27. The stab wounds cut McEwan's voice box, carotid artery, and lung. Id. at 918. Additionally, Dr. Catellier observed numerous "defensive wounds . . . that might be incurred when someone is

trying to defend oneself, using the hands to protect the vital portions of the body[.]” Id. at 907-08. Because a defendant’s intent may be inferred from the use of a deadly weapon in a manner likely to cause death or great bodily harm, Mitchem v. State, 685 N.E.2d 671, 676 (Ind. 1997), the nature, location, and number of McEwan’s wounds suggest that Quick possessed the requisite intent for murder when he repeatedly stabbed McEwan.

Furthermore, our Supreme Court has previously held that a victim’s threat to “tell on” the defendant for improper acts was not intentionally designed to provoke the defendant and, thus, did not rise to the level of sudden heat. Stevens, 691 N.E.2d at 426. Thus, McEwan’s threat to tell Quick’s wife about their relationship was not sufficient to provoke Quick to act in sudden heat. In sum, Quick’s arguments are an invitation that we reweigh the evidence, which we cannot do when addressing sufficiency challenges. Thus, we conclude that the State presented sufficient evidence to sustain Quick’s conviction for murder.

III. Evidence of Prior Burglaries

Quick argues that the trial court improperly excluded evidence of two burglaries that occurred at McEwan’s home approximately seven weeks before her murder. While Captain Dwenger testified at trial, Quick attempted to introduce evidence of the burglaries, but the trial court reaffirmed its decision to exclude the evidence. Quick argues that the evidence should have been admitted because of the temporal proximity between the burglaries and the murder and the fact that McEwan told police that she suspected another individual in the burglaries.

Even if we assume for the sake of the argument that the trial court abused its discretion by excluding this evidence, in light of the substantial independent evidence of Quick's guilt, any resulting error was certainly harmless. Quick testified at trial that he was in the McEwan's apartment on the night of the murder and that he stabbed her in sudden heat. Tr. p. 1057, 1067-70. Thus, it is of no moment whether McEwan's apartment was burglarized weeks before her murder because Quick admitted that he was the one in the apartment when she was stabbed. Considering this probative evidence, the trial court's decision to exclude the evidence of prior burglaries was, at most, harmless.

IV. Sentencing

Quick challenges the trial court's imposition of a sixty-two year sentence with two years suspended to probation.⁷ Specifically, Quick argues that the trial court improperly found two aggravating factors—his minimal criminal history and his need for corrective and rehabilitative treatment.⁸

In Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on rehearing, 875 N.E.2d 218 (2007), our Supreme Court held that trial courts are required to enter sentencing statements whenever imposing a sentence for a felony offense. The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. Id. If the recitation includes the finding of aggravating or mitigating circumstances, then the

⁷ A person who commits murder shall be imprisoned for a fixed term between forty-five and sixty-five years, with the advisory sentence being fifty-five years. Ind. Code § 35-50-2-3.

⁸ Additionally, the trial court found the brutal manner in which Quick murdered McEwan—specifically, the number of stab wounds he inflicted on her—to be an aggravating factor. See McCann v. State, 749 N.E.2d

statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. Id. We review sentencing decision for an abuse of discretion. Id. A trial court may abuse its discretion by entering a sentencing statement that includes reasons for imposing a sentence not supported by the record, omits reasons clearly supported by the record, or includes reasons that are improper as a matter of law. Id. at 490-91.

Quick argues that the trial court improperly considered his criminal history to be an aggravating factor because his last conviction was for misdemeanor check deception in 2000. Tr. p. 1147. Quick emphasizes that, after summarizing his criminal history—which includes five misdemeanors and one felony conviction⁹—the trial court acknowledged that Quick’s history “may not be uh, as significantly uh, glaring in terms of numbers as many other people that have appeared in this Court.” Id. at 1148.

A defendant’s criminal history can be a valid aggravator even if it is entirely comprised of misdemeanor convictions. McNew v. State, 822 N.E.2d 1078, 1081 (Ind. Ct. App. 2005). In addition to five misdemeanors, Quick has a prior felony conviction for dealing cocaine—the same substance he was smoking the night he murdered McEwan. Thus, we do not believe the trial court abused its discretion by finding Quick’s prior criminal history to be an aggravating factor.

1116, 1120 (Ind. 2001) (holding that the nature and circumstances of a crime can be a valid aggravating factor). Quick does not challenge this factor on appeal.

⁹ Because Quick did not include the pre-sentence investigation report in the record on appeal, we used the parties’ arguments during sentencing to discern his previous criminal history.

It is well settled that the need for correctional treatment best served by commitment to a penal facility is a proper aggravator “only when the trial court articulates why the specific defendant requires treatment for a period of time in excess of the [advisory] sentence.” Armstrong v. State, 742 N.E.2d 972, 980-81 (Ind. Ct. App. 2001). Put another way, to properly enhance the defendant’s sentence for this factor, the trial court must explain why the defendant is in need of more correctional treatment than the advisory sentence. Id.

The trial court noted that Quick had been placed on probation after his previous convictions but had violated the terms of his probation multiple times. Specifically, it commented that “probation hasn’t been uh, a strong suit as far as you’re concerned.” Tr. p. 1148. Even if Quick does not consider the trial court’s reasoning to be detailed enough to sustain the challenged aggravator, we note that two valid aggravating factors remain—Quick’s criminal history and the nature and circumstances of the crime. Thus, we conclude that the trial court did not abuse its discretion by sentencing Quick to an enhanced sentence.

The judgment of the trial court is affirmed.

DARDEN, J., and ROBB, J., concur.